

Remarks

The above amendments and following remarks are submitted in order to be fully responsive to the Office Action mailed May 8, 2003. Claims 1, 4, and 6-18 are pending. With this response, no claims are amended. Reconsideration and further examination of the application are respectfully requested.

Claim Rejections - 35 U.S.C. §112

Claims 6-9 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner argued that the structural features encompassed by the phrases "tear drop-shaped," "sun-shaped," "fire-shaped," and "ghost-shaped" cannot be determined rendering the claims indefinite.

Applicants generally traverse the Examiner's indefiniteness rejections. First, using such shape recitations is a well-established claim practice. For instance, Shaver itself (U.S. Pat. No. 5,082,778 relied upon by the examiner) recites the shape term "teddy bear" in claim 5. (Column 6, lines 65-68 through column 7, line 2). In Shaver the term "teddy bear" was used to describe the shape of the "representational figure." In Shaver the term "teddy bear" is sufficiently definite and is no different from Applicant's use of the terms "tear drop-shaped," "sun-shaped," "fire-shaped," and "ghost-shaped." All are terms used in the vernacular of the public at large. It is not even necessary to go to one skilled in the art to define the terms since virtually any member of the public could appreciate what is meant by each of the terms. As such, the claimed phrases are as definite as the term "teddy bear" as claimed in Shaver.

In short, even Shaver, a key reference relied upon by the Examiner, recites shape features in the claims. Yet, the Examiner has no trouble interpreting Shaver and applying it to the claims under prior art rejections discussed below. Under the same reasoning applied to the present claims, should not Shaver also be so bereft of meaning so as not to be properly applied as a reference?

Of course, Shaver is not the only patent whose claims use shape recitations. As just a few of many representative examples, please see the claims in the following:

USD436020 (Coil hose hanger with sun shaped head member); US 5011211 (U-shaped); US 6561922 ("The golf club shaft of claim 1 wherein the portion of said shaft having a non-circular cross-section has a tear drop-shaped cross-section."); US 6478156 (bags having a tear drop shaped support); US 6554336 (suction body is heart shaped); US 6461011 (elongate, flame-shaped piece); and US 5666499 (ghost shaped image is displayed).

Clearly, shape recitations are proper, and the meanings of those used in the present claims easily satisfy the requirements of 35 USC 112. The representative patents cited just above show this. Additionally:

The Examiner specifically argued that regarding claim 6, the structural features encompassed by the phrase "tear drop-shaped" can't be determined. Applicant respectfully disagrees. Random House Webster's College Dictionary, on page 1370 defines the word "teardrop" as "something shaped like a falling drop of thin liquid, having a globular form at the bottom tapering to a point at the top." The term teardrop is clearly known to the public as the shape of a dropping liquid. When a search for "tear drop" or "teardrop" is done on www.google.com, a plethora of sites result, many of which include a diagram of the shape, or a photo of a tear-drop shaped object, such as a pendant, a chandelier crystal, etc. Moreover, while the sites are not affiliated with each other, all of the shapes shown on the sites are similar if not identical in shape. Applicant asserts that the term "tear drop-shaped" is widely known in the public and is therefore not indefinite.

Regarding claim 7, the Examiner argued that the structural features encompassed by the phrase "sun-shaped" cannot be determined. Applicants disagree because the term "sun shaped" is generally known to the public at large and even to very young children who cannot yet read as is evidenced by preschool aged children who include the sun in their drawings or paintings. A sun shape is generally circular having radiant protrusions extending therefrom. When a search is conducted on www.google.com for the term "sun shape" or "sun shaped" many sites result having diagrams or photos of sun-shaped mylar balloons, sun-shaped mirrors, coloring pages, to name a few. All of the shapes shown in the photos or drawings are similar which supports Applicant's assertion that the term

"sun-shaped" is known by the public and is therefore not indefinite as asserted by the Examiner.

The Examiner argued that claim 9, in reciting the phrase "ghost-shaped," was indefinite because structural features encompassed by the phrase can't be determined. Again, Applicant respectfully disagrees with the Examiner and asserts that the term ghost-shaped is also known by members of the public at large. Many Halloween greeting cards, Halloween decorations and the like include drawings of ghosts. Upon conducting a search on www.google.com for "ghost shape" and "ghost shaped" numerous sites resulted showing photos of ghost shaped suckers or lollipops, mylar balloons, muffin tins, to name a few. Yet another example of a ghost-shape is the animated Caspar the Friendly Ghost. Applicants again assert that the term "ghost shaped" is sufficiently definite because it is so widely abundant in the public and members of the public readily appreciate what is meant by the term, "ghost shaped."

Even more telling, a young child using this toy would have no difficulty identifying these shapes. If a child can do this, how could skilled workers, including professional psychologists fall short as suggested by the Examiner?

Finally, MPEP Section 2137.04 states that breadth of a claim is not to be equated with indefiniteness. Applicants believe that the claims as recited are definite and the Examiner may be equating definiteness with breadth. If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph. In re Miller, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). Applicants hereby request that the Examiner withdraw the indefiniteness rejections.

Claim Rejections - 35 U.S.C. §102

Claims 1, 4, 6-9 and 12-16 are rejected under 35 USC 102(b) as being anticipated by Shaver. The Examiner argued that Shaver discloses an interactive toy containing all the elements of the claims. With respect to the pending independent claims, claims 1 and 13, Applicant respectfully disagrees with the Examiner because Applicant integrates three unique criteria; these being color, shape, and facial expression, into a single

playpiece. Shaver fails to disclose the claimed invention because Shaver does not integrate even two unique criteria into a single playing piece.

Moreover, Shaver does not teach a distinct shape for each playpiece. All of Shaver's playpieces are disc shaped. As a result, Shaver requires a complete set of disc shaped playpieces for facial expression, another set of disc shaped playpieces for color, and yet a third set of disc shaped playpieces for intensity. As such, Shaver requires a multitude of playpieces or at least three times the number of playpieces as Applicant's invention.

The manner of therapeutic use further highlights the shortcomings of Shaver. The unique combination of features integrated into the claimed playpieces embodies the playpieces with a specificity of expression indicating the name of the emotion. As such, the playpiece helps to teach the emotion to the child/user.

The ability to teach emotion with specificity is therapeutically and patentably significant. See, e.g., U. Dimberg and Monika Thunberg, *Rapid Facial Reactions to Emotional Facial Expressions*, Scandinavian Journal of Psychology, 1998, 39-45; Dimberg et al. teach that facial expression is an automatic physiological response to emotional stimuli. Also of interest is the study *Linking Babies: Attachment Relationships with Emerging Communication and Language Skills*, Toronto Instant Parent Program; S. Warren et al., *Child and Adolescent Anxiety Disorders and Early Attachment*, J. Am. Acad. Child Adolesc. Psychiatry, 36:5, May 1997, 637-644.

A copy of each is enclosed.

What this body of research shows is how important it is to teach emotion directly to a child. The invention is significant because it applies this research practically in an easy to use toy. Shaver cannot do this. Shaver leaves it up to the child to interpret the playpiece and identify the emotion at issue. Shaver has no specificity and lacks the direct teaching ability of the claimed invention. The invention fills a critical need recognized in the literature, whereas Shaver does not.

Applicant's invention also is much more elegant in its design in that three components, (1) facial expression, (2) color, and (3) shape are integrated into a single playpiece. Shaver lacks this integration of features.

It is not possible for Shaver to anticipate the claims. Withdrawal of the rejection is requested.

Claim Rejections - 35 U.S.C. §103

Claims 1, 13 and 17-18 were rejected under 35 USC 103(a) as being unpatentable over Childswork/Childsplay "Feelings Frogs Game." The Examiner asserted that Childswork/Childsplay discloses interactive playpieces including most of the elements of the claims, with reference to claims 1 and 13, providing a plurality of playpieces, each playpiece comprising a unique color where the figures clearly show that each playpiece comprises only one color and textual information indicative of an emotion. The Examiner continued in that interacting with the toy, as required by claim 13, to explore an emotional experience is inherent with the toy and pointed to in the description on page 22.

The Examiner's argument continued stating that although Childswork/Childsplay discloses most of the elements of the claims, as stated above, the reference fails to teach a unique visually discernible facial expression comprising eyes and a mouth, as required by claims 1 and 13, a container comprising a storage chamber as required by claims 1 and 13. However, the Examiner asserted that the use of facial expressions, comprising eyes and mouth, on toys to facilitate exploration of emotions is well known in the art. Therefore, the Examiner contended that it would have been obvious to one having ordinary skill in the art, at the time of the claimed invention, to provide facial expressions of the frogs of Childswork/Childsplay for the purpose of further displaying/identifying a distinctive emotion associated with the toy.

Applicant disagrees that her invention is obvious in light of the Childswork/Childsplay "Feelings Frogs Game." As the Examiner concedes, the frogs lack facial expression. In place of the facial expressions, the Childswork/Childsplay frogs include text or a word that defines an emotion. Applicant disagrees with the Examiner's assertion that it would have been obvious to provide facial expression on the frogs.

One skilled in the art reviewing the Childswork/Childsplay certainly would not contemplate the use of facial expression because emotion is described in a textual

context. Substituting a graphical facial expression for the text of Childswork/Childsplay would destroy the intended textual functionality of Childswork/Childsplay. Further, since the emotion is already included as text it would be redundant to include the facial expressions for each textually described emotion. This difference, as compared to Applicant's invention would afford the Childswork/Childsplay interactive "game" only useful for children who are capable of reading. Any child unable to read due to age or learning disability would not be able to discern the different emotions attached to each frog. This is distinct from Applicant's invention since no text on the playpieces is necessary.

Second, the Childswork/Childsplay interactive game only includes two unique criteria with respect to each playpiece as compared to Applicant's invention which integrates three unique criteria into each playpiece. The Childswork/Childsplay product playpieces include color and text on each playpiece whereas Applicant's invention integrates at least color, facial expression, and shape into each playpiece.

For the reasons listed above, the lack of facial expressions on the playpieces, the failure to integrate at least the three criteria into each playpiece, and the requirement that the participants are readers, Applicant's invention is not obvious in light of the Childswork/Childsplay Feelings Frogs game. Applicant requests that the Examiner withdraw the obviousness rejection under Section 103(a) based upon this reference.

Claim 10 was rejected under 35 USC 103(a) as being unpatentable over Shaver et al. '778 in view of Solomon '521. The Examiner argued that Shaver discloses all the elements of the claims, but for each playpiece comprising one or more panels enclosing stuffing material, however Solomon teaches a psychotherapeutic toy, like that of Shaver, which teaches a playpiece comprising panels enclosing stuffing material. Therefore, the Examiner concluded that it would have been obvious to one having ordinary skill in the art at the time of the claimed invention to manufacture the toy of Shaver with playpieces comprising panels enclosing a stuffing material for the purpose of providing a pleasing tactile aspect for the user.

Applicant respectfully disagrees with the Examiner that Shaver and Solomon together disclose the claimed invention. Applicant refers to the portion of this response addressing the Section 102(a) rejection based upon Shaver as it is relevant to the Section

103(a) rejection asserted by the Examiner. Nothing in Shaver (as itemized above) or Solomon suggests integrating three unique criteria into a single playpiece. As stated above, Shaver includes only one criteria in each playpiece and fails to combine more than one criteria into a playpiece. Likewise, Solomon includes only one criteria into each playpiece, this being facial expression. Each of Solomon's and Shaver's playpieces are identical shape. Thus, even if we combine Solomon and Shaver they fail to provide Applicant's invention requiring integrating three unique criteria into each playpiece. As such, Applicant requests that the Examiner withdraw the obviousness rejection based upon Shaver and Solomon.

Claim 11 was rejected under 35 USC 103(a) as being unpatentable over Shaver et al. '778. The Examiner asserted that Shaver disclosed all the elements of the claims, as stated above, but for a container being heart-shaped as required by claim 11. The Examiner argued that it would have been obvious to manufacture the toy of Shaver with a container being heart shaped for the purpose of representing an emotion of love by the container, especially since such construction is well known in the art. For the reasons outlined above Applicant disagrees that Shaver disclosed all the elements of the claims but for the heart shaped container. Applicant further disagrees that it is an obvious variation to change from a teddy bear or stuffed animal shape to a heart. The teddy bear or stuffed animal of Shaver was chosen as a "normal play toy" and a "non-threatening object with which the child could relate." (Column 3, lines 20-27) In contrast to a teddy bear, a heart is not a "normal play toy." Also, a stuffed animal or teddy bear has its own facial expression whereas an inanimate object such as a heart does not ordinarily display a facial expression. Applicant asserts that for these reasons it is not an obvious variation of Shaver to change the teddy bear to a heart shaped receptacle and as such Applicant hereby requests that the Examiner withdraw such rejection.

CONCLUSION

In view of the above remarks, it is respectfully submitted that the claims and the present application are now in condition for allowance. Approval of the application and allowance of the claims is earnestly solicited. In the event that a phone conference between the examiner and the Applicant's undersigned attorney would help resolve any remaining issues in the application, the Examiner is invited to contact said attorney at (651) 275-9804.

Respectfully Submitted,

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